IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 541 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

YAZDI DARABSHA ICCHAPORIA

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 541 of 2003

MR HORMAZ B SHETHNA for Petitioner No. 1

MR ND GOHIL ADDL PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 27/01/2003

ORAL JUDGEMENT

At the outset, this Court would like to refer relevant obseervations made by the Apex Court in case of POKAR RAM V. STATE OF RAJASTHAN reported in 1985 SC 969

which reads as under :

"... Let it be made distinctly clear that status in life, affluence or otherwise, are hardly relevant considerations while examining the request for granting anticipatory bail. Anticipatory bail to some extent intrudes in the sphere of investigation of crime and the Court must be cautious and circumspect in exercising such power of a discretionary nature. This case amply illustrates that the power was exercised sub silentio as to reasons or on considerations irrelevant or not germane to the determination."

#. Heard Mr.H.B.Shethna on behalf of the petitioner and learned APP Mr.N.D.Gohil appearing on behalf of the respondent - State.

Rule. Learned APP Mr.N.D.Gohil waives service of Rule on behalf of the respondent - State.

#. In the present petition, the petitioner has challenged the order passed in Criminal Misc. Application No.52 / 2003 by the Additional Sessions Judge, Surat rejecting the anticipatory bail application preferred by the petitioner and prayed for grant of anticipatory bail in favour of the present petitioner. It transpires that a complaint being First Information Report is lodged with Rander Police Station of Surat District by Ramsinh Hirabhai Rajput, Secretary of the South Gujarat University and the same is registered with Rander Police Station being C.R.No.I-319 / 2002 against one Rahul Vinubhai Patel for the offence punishable under Sections 465, 468, 471 and 114 of IPC. Accordingly, offence has been registered against one Rahul Vinubhai Patel on 23rd December, 2002 and he was arrested on 4th January, 2003. After arrest of said Rahul Vinubhai Patel, during the course of interrogation by the police authority, he disclosed the name of one Sandeep Ganpatbhai Patel, who was also arrested on 4th January, 2003. Thereafter, said Sandeep Ganpatbhai Patel was interrogated by the police authority who, in turn, disclosed the name of the present petitioner. As revealed, the offence is to produce fake and fabricated marksheet before the Navyug Commerce College by said Rahul Vinubhai Patel and in such offence, one Sandeep Ganpatbhai Patel as disclosed by the first accused and the present petitioner is also said to have been involved as per the statement given by one Sandeep Ganpatbhai Patel.

#. Learned advocate Mr.Shethna appearing on behalf of the petitioner submitted that the petitioner is having bright academic career as pointed out in Para-5[D] of the application memo and his academic career is very bright and prospective and therefore, if the petitioner is arrested by the police authority, it will not only a stigma against the present petitioner but his entire career will be ruined. In para-5[D] details are given showing academic performance of the petitioner. It is also submitted that petitioner is having NIC camp certificate and also taking active part in various activities run by the University like Volleyball, weight lifting and power lifting. It is also submitted that the petitioner has proved his skills in languages like Sanskrit and Hindi. Learned advocate Mr.Shethna has also submitted that the FIR does not reflect the name of the petitioner, nor his name is disclosed by the University at the time of lodging of the complaint. However, he submitted that because of the statement made by co-accused, his name came to be disclosed before the police authority. Learned advocate Mr.Shethna, however, submits that statement of the co-accused cannot be taken into account and therefore the petitioner deserves to be granted anticipatory bail under Section 438 of Cr.P.C. He also submitted that even this Court may impose specific condition giving liberty to the prosecution to move remand application in the event of grant of anticipatory bail in favour of the petitioner. Learned advocate Mr.Shethna also submitted that some strict and stringent conditions may be imposed against the petitioner in the event of grant of anticipatory bail and further submits that the petitioner is prepared to abide by such stringent conditions. Mr.Shethna while pointing out the charges and Sections alleged in the FIR submitted that the charge under Section 468 of IPC is only non bailable offence whereas the rest of the offences so alleged are bailable offences and therefore, in such circumstances, the petitioner being the student, this Court may exercise its discretionary powers and grant anticipatory bail. Learned advocate Mr.Shethna also submits that the petitioner is reputed person studying in third year of Law faculty in South Gujarat University. Learned advocate Mr.Shethna has also submitted that looking to the offences alleged or disclosed against the present petitioner, the same attract minor punishment not beyond seven years and maximum amount involved in the allegations is not more than Rs.9,000/-. Lastly, learned advocate Mr.Shethna also pointed out that today the petitioner is personally present before this Court. Except the submissions and contentions referred to above, no other submission advanced by the learned advocate

Mr.Shethna on behalf of the petitioner.

#. Learned APP Mr.N.D.Gohil appearing on behalf of the respondent State has submitted that the complaint came to be lodged by the Secretary [Kulsachiv] of the South Gujarat University on 23rd December, 2002 disclosing serious offence to produce fake and fabricated marksheet before the Navyug Commerce College against one Rahul Vinubhai Patel, who came to be arrested on 4th January, 2003. Learned APP Mr.Gohil submitted that said Rahul Vinubhai Patel during the course of interrogation disclosed the name of one Sandeep Ganpatbhai Patel, who was also arrested on 4th January, 2003. Thereafter, said Sandeep Ganpatbhai Patel disclosed the name of the present petitioner stating that from whom [present petitioner] such fake and fabricated marksheet is procured. Mr.Gohil, learned APP therefore submitted that this seems to be a channel involving persons more than one in number in the crime. He also submitted that after arrest of the present petitioner, it may be possible that he may disclose some other names which cannot be known at this stage. He also submitted that before the trial court, anticipatory bail application was filed on 13th January, 2003 by the present petitioner. The trial court has considered all these aspects and submissions from both the sides and ultimately it come to the conclusion that in such serious matter, anticipatory bail can not be granted in favour of the petitioner. Learned APP Mr.Gohil also submitted that the trial court has given sufficient and cogent reasons in support of its conclusion and the trial court has not committed any error while rejecting the anticipatory bail application submitted by the petitioner. He also submitted that the trial court has considered decisions of the Apex Court as well as of this Court reported in case of [i] Gurubaksh Singh Sibba and other v. State of Punjab reported in 1989[2] SCC pg.465, [2] Balevbhai Natwarbhai Barot and other v. State of Gujarat reported in 1982 Criminal Law Journal and [3] Koli Madha Juna and others v. State of Gujarat reported in 1985 GLH 49 and also considered other decisions referred in the impugned order. Mr.Gohil further submitted that the statement made by the co accused can be relied upon by the investigating officer to find out clue to reach to the root of the crime and / or offence against the present petitioner and other accused persons that may be found out during the course of investigation. He also submitted that there is no bar to consider such statement of the co-accused when investigation is going on and especially, serious offence is disclosed against the present petitioner. At this stage, there is no need to go to see that whether such

evidence can be relied upon or not. But it is merely a stage of investigation and the police authority or the investigating officer concerned has to find out the real culprits of such offence which has been disclosed against the accused. Therefore, Mr.Gohil submitted that in such circumstances, there is no specific feature and grounds pointed out by the petitioner for entitlement of anticipatory bail under Section 438 of Cr.P.C.. Mr.Gohil also pointed out that it is not case of the false implication of the petitioner because it is based upon the statement made by the co-accused - Sandeep Ganpatbhai Patel. Mr.Gohil, learned APP also submitted that the powers under Section 438 of CR.P.C. require to be exercised by the Court sparingly with due care and caution and anticipatory bail cannot be granted in favour of the accused when his false implication is not made out in favour of the alleged person. Therefore, learned APP Mr.Gohil submits that the application submitted by the petitioner may be rejected and the discretionary powers may not be exercised in favour of the present petitioner.

#. I have considered submissions made by the learned advocates for the parties. The record itself suggests that fake and fabricated marksheet has been produced by the accused Rahul Vinubhai Patel before the Navyug Commerce College which was ultimately detected by the authorities of the University and therefore, the complaint came to be lodged with Rander Police Station on 23rd December, 2002 pointing out the name of Rahul Vinubhai Patel as accused. Thereafter, the said complaint was registered on 23rd December, 2002 against Rahul Vinubhai Patel and he was arrested on 4th January, 2003. When statement of said Rahul Vinubhai Patel was recorded and interrogated by the police authority, at that time, he disclosed the name of Sandeep Ganpatbhai Patel and thereafter, he was also arrested on 4th January, 2003 and while during the course of interrogation of said Sandeep Ganpatbhai Patel by the investigating officer, he disclosed the name of the present petitioner. Therefore, looking to these facts, it cannot be said that the petitioner is falsely implicated in the present offence. The Law is settled on this point that if there is no harassment or vindictive action by any person against someone falsely implicating such persons to drag him into criminal prosecution with a view to damage the reputation of such persons and if the Court feels that it is clear false implication by vindictive steps or a clear harassment then, the Court may exercise the powers under Section 438 of Cr.PC. Here, apparently it is not false implication. Similarly, if we look into the channel, then it can be found that

initially the complaint was filed against one Rahul Vinubhai Patel. After his arrest, he disclosed the name of Sandeep Ganpatbhai Patel. Similar story with Sandeep Ganpatbhai Patel because his name was disclosed by the co-accused Rahul Vinubhai Patel. If Rahul Vinubhai Patel has disclosed wrong name and / or falsely implicated Sandeep Ganpatbhai Patel, then said Sandeep Ganpat cannot disclose the name of present petitioner. In such eventuality, the petitioner can deny the fact that he is not involved in any way but he admitted that part that he is involved as well as present petitioner is also involved in the said offence because Rs.9000/- has been demanded for giving false and bogus marksheet. I have perused the order passed by the trial court. The facts of the present case narrated in para-4 of its order by the trial court, which reflects that one Rahul Vinubhai Patel was student of 1st Year B.Com. in Navyug Commerce College. That said Rahul appeared in examination of 1st B.Com. conducted in April, 2000 but he declared fail. Thereafter also, he appeared in examination in March, 2002 at seat No.8202. However, in the result published vide notification dated 19th June, 2002, said Rahul Vinubhai was declared fail. Thereafter again he appeared in October, 2002 vide Seat No.2906. But said Rahul produced fake and fabricated marksheet bearing Seat No.8202 for getting admission in Navyug Commerce College in 2nd Year B.Com. The number described in said fake and fabricated marksheet was 00878 which is detected to be fake and bogus one having false number and therefore it was taken into custody and ultimately it was sent to South Gujarat University. Normally, marksheets are being prepared on computers by the South Gujarat University but the copy of the marksheet which was produced by said Rahul before the Navyug Commerce College was not prepared on computer but it was printed blank marksheet wherein subjects and other details of marks are printed on typewriter. Ultimately, it was found that the marksheet which was produced by said Rahul was fake and fabricated one bearing number 00878 on the said marksheet and that entire counterfoil of the said marksheet was blank and no such marksheet having Number 00878 issued to any student by South Gujarat University. Thus, it has come on record that said Mr.Rahul has produced bogus marksheet in Navyug Commerce College which was not at all issued by the South Gujarat University and though he declared failed even though he wanted admission in 2nd year B.Com. and that is how the incident came to light and as per the statement disclosed by the first accused during the course of interrogation, said Sandeep Ganpatbhai Patel as well as present petitioner are said to have involved in the racket. Not only that, said Rahul disclosed and

admitted before the Investigating Officer that he procured said fake and fabricated marksheet at the cost of Rs.9,000/- from another accused Sandeep Ganpatbhai Patel. After arrest of said Sandeep Ganpatbhai Patel, during the course of interrogation, said Sandeep made statement that he procured said fake marksheet after paying Rs.9,000/- to the present petitioner and that is how the Investigating Officer wants presence of the present petitioner by way of arrest for the offence in question. It is also necessary to note that said two accused were arrested by the Investigating Officer on 4th January, 2003 and as per the statement of the mother of the present petitioner, he left the house on 6th January, 2003 and the mother was not aware as to whereabouts of the present petitioner and where he has gone. Thus, non availability of the petitioner also indicates some interconnection in respect of the incident that present petitioner is involved prima facie in the said incident, otherwise, there is no need for the petitioner to leave the house on 6th January, 2003. The trial court has also rightly observed that in normal circumstances, the statement of the co-accused cannot be relied upon but during the course of investigation, the same can be relied upon by the investigating officer. The trial court has also considered that unless and until the present petitioner is arrested by the police authority, no further investigation is possible and no further details will be available to the Investigating Officer and therefore the trial court has considered in such case when serious offence is alleged or disclosed against the present petitioner and as per the statement of the co-accused since said to be prima facie involved is found to be correct and therefore, the trial court has rejected the anticipatory bail application of the present petitioner.

#. Recently, this Court has considered the question whether the statement of co-accused before the police implicating any person in the offence, can the police authority use such statement as clue while investigating the offence to reach the root of crime and the other accused persons. This Court has considered the said question and come to the conclusion that while investigating the offence and interrogating other accused persons, if any statement made during the investigation, that can be considered by the Investigating Officer as a clue while investigating the offence and / or root of crime. This Court has considered number of decisions of the Apex Court as well as this Court. This Court has considered various aspects when such anticipatory bail application is filed by such accused in case of MOHMED

SALIM ABDUL RASID SHAIKH V. STATE OF GUJARAT reported in 2001 [2] GLR 1580 The relevant observations made in para-13 are reproduced as under :-

"13. There is no scope for present applicant to urge that he may be saved from disgrace or unwarranted hardship. While entertaining the anticipatory bail application of the accused, the Court should consider various aspects such as;

[i] earlier offences registered against the applicant accused and the nature thereof including the area of activity, modus etc. if brought to the notice of the Court;

[ii] gravity of the circumstances in which the offence is committed. Whether custodial interrogation is, prima facie, unavoidable ?

[iii] likelihood of the accused fleeing from justice;

[iv] position and status of the accused individually and also with reference to the victim and witnesses;

[v] likelihood of repetition of similar type of offence;

[vi] whether he would jeopardise his own life being faced with grief or grim prospects of possible conviction in the case;

[vii] likelihood of tampering with the evidence or witnesses during the process of investigation, status and stage of investigation;

[viii] plea of false implication on some special vendetta, if taken.

[ix] other relevant grounds which may apply to facts and circumstances of that particular case;

#. It can be appreciated that conditional anticipatory bail can be granted and simultaneously, the investigating agency can be permitted to ask for remand for custodial interrogation or the petitioner can be

directed to cooperate with investigation in drawing panchnama but such conditions are normally imposed when the Court, prima facie, is of the opinion that grant of anticipatory bail to a particular person is likely to hamper investigation and investigating agency is likely to lose an opportunity to exploit all the fact situation, probabilities, or opportunities which the agency may get during the custodial interrogation of a person, the Court should go slow in granting anticipatory bail and therefore, the Apex Court has observed that this discretionary jurisdiction should be exercised sparingly. It is also pertinent to note that prosecution case mainly rests on circumstantial evidence and police has received a clue against the present petitioner as per the statement made by the co-accused already arrested. Irrespective of the fact that statement of the co-accused to police is not admissible in evidence before the Court but police can certainly consider that statement as a clue while interrogating him further or other persons arrested or interrogated during the course of investigation. Premature stage of investigation cannot be ignored and anticipatory bail, as a matter of course, should not be granted. Police intends to arrest this applicant for the offence punishable under Sections 465, 468, 471 and 114 of IPC where the accused may be more than one in number and may be channel leading to whole racket as it was found from the statement of said Rahul Vinubhai Patel and Sandeep Ganpatbhai Patel.

#. The Apex Court has considered scope of Section 438 while dealing with anticipatory bail in case of STATE REP. BY THE C.B.I. V. ANIL SHARMA reported in 1997 [7] SCC 187. Important observations on the issue are made by the Apex Court in para-6 and 8 are referred as under :-

"6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation - oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulted by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being

subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.

8. The above observations are more germane while considering an application for post-arrest bail. The consideration which should weigh with the Court while dealing with a request for anticipatory bail need not be the same as for an application to release on bail after arrest. At any rate the learned Single Judge ought not to have side-stepped the apprehension expressed by the CBI [that the respondent would influence the witnesses] as one which can be made against all accused persons in all cases. The apprehension was quite reasonable when considering the high position which the respondent held and in the nature of accusation relating to a period during which he held such office."

The Apex Court has come to the conclusion that advantage in custodial interrogation of eliciting more useful information and material should be kept in view and the Court has to presume that the police officers would conduct the custodial interrogation in a responsible manner without using third degree methods. But the approach of the Court in dealing with application for anticipatory bail under Section 438 should not be same as that in dealing with regular post arrested bail applications.

#. Similarly, the Apex Court has also considered the scope of Section 438 in case of DUKHISHYAM BENUPANI, ASSTT DIRECTOR, ENFORCEMENT DIRECTORATE [FERA] V. ARUN KUMAR BAJORIA reported in 1998 [1] SCC 52. The relevant observations made in para-7 are quoted as under :-

"7. It seems rather unusual that when the aggrieved party approached the High Court challenging the order passed by a subordinate court the High Court made the position worse for the aggrieved party. The officials of the Directorate are now injuncted by the Division Bench from arresting the respondent and the time and places for carrying out the interrogations were also fixed by the Division Bench. Such kind

> of supervision on the enquiry or investigation under a statute is uncalled for. We have no doubt that such type of interference would impede the even course of enquiry or investigation into the serious allegations now pending. For what purpose the Division Bench made such interference with the functions of the statutory authorities, which they are bound to exercise under law, is not discernible from the order under challenge. It is not the function of the Court to monitor investigation processes so long as such investigation does not transgress any provision of the law. It must be left to the investigating agency to decide the venue, the timings and the questions and the manner of putting such questions to persons involved in such offences. A blanket order full insulating a person from arrest would make his interrogation a mere ritual."

Thus, the Apex Court has considered that such kind of supervision on the enquiry or investigation under a statute is uncalled for. We have no doubt that such type of interference would impede the even course of enquiry or investigation into the serious allegations now pending. For what purpose the Division Bench made such interference with the functions of the statutory authorities, which they are bound to exercise under law, is not discernible from the order under challenge. It is not the function of the Court to monitor investigation processes so long as such investigation does not transgress any provision of the law. It must be left to the investigating agency to decide the venue, the timings and the questions and the manner of putting such questions to persons involved in such offences. A blanket order full insulating a person from arrest would make his interrogation a mere ritual. Therefore, the Apex Court has considered that so long the investigation is going on in a legal manner and no provision of law or rules is violated by the Investigating Officer, in such circumstances, little interference by this Court, may ultimately hamper the investigation.

##. This Court considered the settled law and the ratio laid down by the Apex Court in the judgments referred above as well as considering the decisions of this Court in respect of scope of Section 438 of Cr.P.C., so also keeping in mind the basic facts of the present case. Thus, the material produced on record reveals that fake and fabricated marksheet was produced by one Rahul Vinubhai Patel before Navyug Commerce College as if the

same has been issued by the South Gujarat University which was ultimately detected as fake and bogus and it was inquiry on the basis of the complaint filed by the Secretary from said Rahul Vinubhai Patel and after arrest it was disclosed the name of Sandeep Ganpatbhai Patel, who in turn disclosed the name of the present petitioner. It may also be appreciated that present petitioner is not available nor his whereabouts available from 6th January, 2003 and as stated by the mother of the petitioner before the police authority, he left the home and therefore, this non availability and absconding act on the part of the petitioner, prima facie, indicates involvement of the present petitioner in the offence, otherwise, there is no need for the petitioner to go out from his own house without informing even to his mother. Therefore, in over all view of the matter, according to my opinion, this being the serious offence and when the offence registered and disclosed against the present petitioner as per the statement made by one Sandeep Ganpatbhai Patel, in such case, if entire channel and / or racket is working to produce such fake and fabricated marksheets, this Court should not interfere in availability of the petitioner before the police for usual interrogation and if done so, it will be adversely affect the interest of the education field and the society as a whole. It may also be appreciated that pursuant to the complaint lodged with the police first accusing one Rahul Vinubhai Patel, who in turn, during the course of interrogation disclosed the name of one Sandeep Ganpatbhai Patel and who disclosed the name of the present petitioner for procuring such fake and fabricated marksheet. Therefore, it may be possible that in such chain of incidents, other accused may be disclosed leading to root of crime and in the process of investigation, entire scandal for preparing fake and fabricated marksheet may come to light. Normally, the persons involved in the racket and / or scandal would not prepare a single fake marksheet but they might have prepared and forged fake marksheets more than one in number and therefore, it can be doubted that some racket may be working for such illegal acts and if the investigation at this crucial stage is interfered with by grant of anticipatory bail in favour of the petitioner, it would certainly put the curtains before the entire racket may come to light and the real culprits may not be possible to bring to justice which ultimately damage the education faculty as a whole. Therefore, while deciding such anticipatory application, it is the first duty of the Court to see seriousness of the offence, prima facie case and interest of the society at a large. Therefore, when no special and compelling circumstances made out before the Court and no case of

false implication of present petitioner in the alleged offence is made out before this Court, according to my opinion, discretionary powers of this Court should not be exercised in favour of the present petitioner.

##. In view of above discussion and considering the material on record produced before this Court, I am of the opinion that there seems prima facie involvement of the present petitioner in the alleged offence in question as per the statement made by said Sandeep Ganpatbhai Patel. This Court is of the opinion that at the initial stage of the investigation of the offence, grant of anticipatory bail in favour of the petitioner is likely to hamper the investigation and investigating agency is likely to lose an opportunity to exploit all the fact situation, probabilities or opportunities which the Agency may get during the custodial interrogation of a person and therefore, keeping in mind all the factors, no interference of this Court is called for. The impugned order passed by the trial court rejecting anticipatory bail application of the petitioner is just and proper and the same is passed within limits of the law keeping in mind the settled principles of law and for that the trial court has not committed any error which does not requires any interference of this Court.

##. Therefore, according to my opinion, there is no substance in the present application and the same is rejected accordingly. However, it is made clear that the observations made by this Court at this stage while deciding the anticipatory bail application, will not come in way of the petitioner at the time as and when if ultimately trial court is proceeded with trial and at the stage of consideration of regular bail application, if preferred by the petitioner, trial court may not be influenced by the observations made by this Court.

Rule is discharged accordingly.

Date : 27-1-2003 [H.K.Rathod, J.]

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